ACCA Presentation
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A Profile of the Self-Represented Litigant

Introduction

First, let me say how pleased I am to have the opportunity to speak to you on this topic.

In a general way, we are all attending this conference because we know, anecdotally, that:

- more people are representing themselves
- in more types of cases
- in more complex matters
- and have more demands/greater expectations
- and that we are not meeting the need as best we could.

This is certainly the experience in Nova Scotia, and from my conversations and correspondence with court services staff from across the country, I believe that many of you would agree.

The next two days will give us strategies to help cope with the increased demands from the public and ideas on how to improve service to self-represented litigants. But before we get there, I think we need to take a step back and learn what we can about self-represented litigants.

The two questions
There are two questions that we should be asking ourselves:

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18. "How many people are representing themselves?" *The answer to this question will help us allocate resources.*

19. "Who are they?" *The answer to this question will help us understand who this group is and what they need. Put another way, this question could also be phrased as "What can we do to assist self represented litigants to ensure they have access to justice while maintaining the smooth administration of justice?"*

In this presentation, I will provide you with some information to partially answer these questions and then discuss ways to get the information we need.

How many people are representing themselves?

We do not know. Very few Canadian jurisdictions are keeping statistics. We have some figures that are helpful:

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In Ontario[63]:

- the number of self-represented litigants in the Unified Family Court increased nearly 500% from 1995 to 1999, despite an increase in the number of legal-aid certificates being issued
- as of 1999, in the Ontario Superior Court (formerly the General Division), the number of self-represented litigants outnumbers represented litigants 1.6 to 1.

Estimates from the Queen's Bench here in Winnipeg suggest that 15% of those in family law proceedings are representing themselves, and 5% in other civil matters.

I heard from four jurisdictions that they do not keep any statistics and they did not hazard a guess.

In Nova Scotia, several months back, we performed a very unscientific survey; nothing more than a recording of the impressions of front line staff. Nonetheless, you may be interested in the responses:

Slide - NS Responses

Nova Scotia Courts	At time of first application or appearance	At time of hearing or subsequent appearance
Court of Appeal	25%	25%
Supreme Court	25%	15%
Supreme Court (Family Division)	70%	50%
Probate Court	65%	15%
Provincial Court	55%	25%
Family Court	85%	60%
Small Claims Court	90%	85%

[63]Middlemiss, Jim. "Who needs a lawyer" *The National.* October, 1999, p. 12.

Clearly, there is a need for empirically researched numbers. We cannot rely upon the impressions of staff nor can we rely only upon recordings of numbers at first appearances or initial documentation. Are we counting the same people at every appearance?

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Jurisdictions outside of Canada are of limited assistance, as they too have very little empirical evidence, and have focused on the family law area. None the less, they are interesting:

- In 1990, 52% of families in the US obtained a divorce without a lawyer and in 88% of cases, at least one party was self-represented or did not respond.[64]
- In Australia's Family Court, 41% of matters involved at least one self-represented person.[65]
- A study of 45 "general jurisdiction" or civil courts, with cases specifically in tort or contract, in the United States found that between 5% and 13% of litigants are self-represented.[66]
- Between 1991 and 1993, the number of self-represented litigants in US federal appeals courts increased by 49 percent[67]

These number generally fit within Nova Scotia's experience, and I suspect, the experience of other Canadian jurisdictions.

Can we draw any conclusions about numbers? I think the best that we can conclude is that:

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- Numbers continue to be high in the family law area, with at least half of litigants representing themselves.

- Other civil courts have increased numbers of self- represented litigants, although the extent of that increase is not clear.

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[64]ABA Standing Committee on the Delivery of Legal Services, *Responding to the Needs of the Self-Represented Divorce Litigant*, American Bar Association (1994).

[65]Dewar, John, Smith, Barry W., and Banks, Cate, *Litigants in Person in the Family Court of Australia*, (2000) Research Report No. 20, Family Court of Australia, at p. 16.

[66]Goerdt, John et al., "Litigation Dimension: Tort and Contracts in Large Urban Counties", *Sate Court Journal* 19 (1), 1995, at p. 43.

[67]"Courts Respond to Rise in Pro Se Cases," *AJS Report for Members*, Spring 1998.

Who are the self-represented?

This, of course, varies greatly. People are representing themselves for different reasons and come with a wide variance of education and skill. There has been some research in the United States that is of interest:

- In the only substantial empirical study of self-represented litigation in the US, a 1990 survey for the American Bar Association[68], it was found in that, in Maricopa County, Arizona (Phoenix):
  - Lower-income people were more likely to represent themselves.
  - Younger persons were more likely than older persons to self-represent.
  - People with no children were significantly more likely to self-represent than those with children.
  - People with no real estate or personal property were significantly more likely to self-represent than those with such assets
  - The most common level of education for pro se litigants were 1 to 3 years of college education. Seventy-five percent of people had represented themselves in court said that they would do it again
  - Some interest groups actively encourage pro se litigation, including militia groups and various organizations composed of people who have been involved in domestic cases.
  - Forty-five percent of surveyed pro se litigants reported that they chose to represent themselves because the case was simple, not because they could not afford an attorney.
  - Thirty-one percent of the pro se litigants represented themselves because they could not afford to retain counsel.

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[68]Seles, Bruce, Beck Connie, and Haan, Richard, *Self-Representation in Divorce Cases* (Chicago, ABA, 1993).

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- A 1996 study commissioned by the New York State Bar Association found that middle-income people are increasingly likely to represent themselves in court, with 26% of those in that category having represented themselves in court.[69]

A majority of respondents to a 1999 US survey found that 58% either strongly or somewhat agreed with the statement, "It would be possible for me to represent myself in court if I wanted to".[70]

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In a recent Australian study[71], they found that:

- 75% of self represented litigants represented themselves because they could not afford a lawyer, although some also indicated negative experiences with the legal profession.
- Almost half of the self-represented had education beyond high-school, although overall the group of self-represented litigants included disproportionately more people with a lower socioeconomic background and little formal education.
- The judiciary of the Family Court raised the concept of "dysfunctional 'serial' litigants" who make vexatious claims, although no numbers were expressed.
- The existence of self-help kits, simplified procedures and other efforts to help self-represented litigants may cause people to choose to proceed without a lawyer.

What can we take from all of that? Again, the need for more information about the community we are serving. This information is the pre-requisite to determining what resources are needed and how funding should be allocated.

To give you an example, in Nova Scotia we set up a committee of support staff to start to review and develop tools to assist self- represented litigants. Much of our initial discussion was based on an assumption that the majority of self-represented litigants have limited education, and so may have low literacy, and would need a very elementary level of assistance. That may be true of some, and may be more true in certain courts, but a different level of service is required for the self-represented

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[69]Spenser, "Middle-Income Consumers Seen Handling Legal Matters Pro Se," *New York Law Journal*, May 29, 1996, at 1.

[70]*How the Public Views the State Courts: a 1999 National Survey by the National Center for the Sate Courts funded by the Hears Corporation*, National Center for State Courts, 1999.

[71]Dewar, John, Smith, Barry W., and Banks, Cate, *Litigants in Person in the Family Court of Australia*, (2000) Research Report No. 20, Family Court of Australia, at p. 33.

litigant who has chosen to represent himself or herself and has one to three years of university education.

This will certainly be different for the Small Claims court, where self-representation is the norm and is in fact encouraged, as opposed to the Court of Appeal, where we have increasing numbers of self-represented placing an extraordinary demand on the time and resources of the Registrar of that court.

From the studies above, and from our experience in trying to design an overall program for self-represented litigants, I believe that we need to keep in mind:

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- literacy/educational level *determined by asking level of education completed*
- willingness to learn/preparedness to represent themselves *determined by knowing why they are not represented/ socioeconomic status*
- other barriers: people with disabilities (both physical and mental), people whose first language is different than that of the court,

Only when we know more about who is representing themselves, or at the very least, acknowledge that one approach will not meet the needs of self-represented litigants, then can we really begin to move forward.

How can we better answer these questions?

We need more information. We can look at studies that exist in other jurisdictions, most notably the US and Australia, however, I believe that we need to begin to research our own numbers.

In Nova Scotia, we are in the process of modifying the Civil Index, the case management software system for the Court of Appeal, Supreme Court and Supreme Court (Family Division) to capture information about the number of people representing themselves when first making an application or defending an action and then how many are self-represented at trial.

Other courts are beginning to gather statistics on the number as well. The Supreme Court of Canada is working on a report to track the number of self-represented litigants in a given year, and Ontario is also keeping statistics on the number of self-represented in its system. Several of the jurisdictions I spoke with indicated that they are able to gather more informal statistics by surveying their courts, although I am not aware of any empirical study.

Knowing the numbers of self represented litigants is an important start. This information is an important when budgeting and planning for the courts. However, I think we need more information about who the self represented are so we can draw from that more information about what they need and how we can assist them.

We have just started to gather this information, in a limited way, in Nova Scotia. As most of you are aware, we have a very new unified family court system in Nova Scotia. As part of the ongoing evaluation of that new court, we are conducting client surveys about the conciliation process, a high level intake and issue identification process. I would like to highlight two areas that we are attempting to capture statistics:

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Q13. Did you have a lawyer to assist you with your case?

Didn't have a lawyer ☐

Had a lawyer ☐ **(If yes)** Was your lawyer: A private lawyer ☐

A legal aid lawyer ☐

Did your lawyer attend the conciliation meetings?

Yes, all ☐

Yes, some ☐

Didn't attend any ☐

(If lawyer didn't attend probe for reasons - couldn't afford lawyer, thought they could handle it by themselves etc.)

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Q23. What is the highest level of education you have completed?

less than high school	☐	some post-secondary schooling	☐
high school diploma	☐	university degree, undergraduate	☐
college/technical degree	☐	other	☐

Q24. In which of the following groups does your family's yearly gross income fall?

less than $15,000	☐
$15,000 to $29,000	☐
$30,000 to $59,000	☐
$60,000 or more	☐

Q25. Clients of the Nova Scotia court system come from a number of different cultural or racial backgrounds. I'm going to read you a list of different groups. Could you please select the category which best describes you.

White	☐	Aboriginal	☐
Black	☐	Other	☐

Specify: _____

Once we know this information, I am hopeful that we can begin to analyze its meaning: are those who choose to represent themselves for non-financial reasons more likely to be open to self-help kits, videos or information sessions, or do they believe they need no assistance? Are those who are self-represented for financial reasons willing to come to information session or form-filling out sessions? What level of assistance do they expect and how can they be supported in helping themselves?

We can ask these questions through focus group testing, client surveys (written, telephone and in person) or expanded intake questionnaires. I suggest that the instruments be crafted by researchers and analysts, to ask the questions correctly and to assist in understanding the results.

Conclusion

I may not have lived up to the promise of this session: "a profile of the self-represented litigant." But I believe that we can draw some conclusions:

1. We know that areas with traditionally high numbers of self represented litigants -family courts and small claims- remain so.

2. Other courts are experiencing an increase in the number of self-represented litigants, from either a slight increase or so many that there are more litigants without lawyers than with, depending the statistics.

3. There is a significant population of people who have chosen to represent themselves, and who may be bringing negative perceptions of lawyers and the justice system with them

4. We must take steps to answer both the "who" and "how many" questions in Canada. The allocation of resources and program design depends on it.

I hope this presentation has been helpful. Having outlined in the broadest terms the "problem", I am looking forward to two days of solutions.

By the way, copies of my slides are available, and if you are interested in knowing more about the studies that I have mentioned, please send me an e-mail. I'd be happy to send you some information.

Thank you.

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